

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

HUNTERS CAPITAL, LLC, et al.,

Plaintiffs,

vs.

CITY OF SEATTLE,

Defendant.

Case No. 2:20-cv-00983-TSZ

DECLARATION OF ARIK K. VAN  
ZANDT IN SUPPORT OF PLAINTIFFS'  
RESPONSE TO CITY OF SEATTLE'S  
MOTION FOR SUMMARY JUDGMENT

**Noting Date: November 15, 2022**

I, Arik K. Van Zandt, declare as follows:

1. I have provided an expert opinion in this case quantifying the economic damages for all Plaintiffs other than Matthew Ploszaj.<sup>1</sup> My curriculum vitae is attached to this document as Exhibit A.

2. This declaration relates to the Plaintiffs' response to the City of Seattle's Motion for Summary Judgment (Dkt. No. 111).

3. I understand that the City of Seattle ("the City") claims I did not control for the effects of the COVID pandemic in my calculations. That is simply not true. To the extent the

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<sup>1</sup> I understand Mr. Ploszaj claims damages related to emotional harm. I did not provide any opinion on those damages.

1 effects of the pandemic were relevant to a particular damages element, my ultimate calculations  
 2 took into account the effect of the pandemic based on all available evidence and my years of  
 3 expertise in valuation of companies and calculation of lost income. I address the City's discussions  
 4 of my opinions on some of these areas below.

5 4. For Plaintiffs where I calculated lost profits for retailers due to COVID based on  
 6 loss of revenue (Sway & Cake, Car Tender,, and Cure Cocktail), I analyzed annual and monthly  
 7 financial statements both before and after CHOP, as well as daily revenue figures for Sway & Cake  
 8 and Cure Cocktail, including during the pre-June 2020 months of the pandemic. As part of my  
 9 analysis, I reviewed all income and expenses during the relevant time periods and spoke with the  
 10 owners of the various entities. Based on that analysis, I conservatively estimated the damages  
 11 caused by CHOP after specifically factoring the impact of COVID.

12 5. The City apparently claims that because Cure Cocktail and Car Tender experienced  
 13 some pandemic-related losses, they could not have experienced additional damages due to CHOP.  
 14 That is not the case, and my calculations for both of those companies adjust for the pre-CHOP  
 15 financial information.

16 6. I did not calculate any lost profits for Bergman's Lock and Key. For Richmark  
 17 Label, my calculations included lost productivity for one day, June 26, 2020, based on my  
 18 conversation with the owner of Richmark in which he indicated that they closed on that day due  
 19 to increased violence and reduced safety in the neighborhood as a result of CHOP. Based on my  
 20 review of Richmark's historical financial statements, I determined that Richmark's revenue and  
 21 profitability were not negatively impacted by COVID prior to CHOP. Therefore no adjustment  
 22 specifically related to COVID was required to calculate lost profits. I note that the City's damages  
 23 expert, Bill Partin, also calculated damages for that same day for Richmark Label.

24 7. For Plaintiffs where I calculated losses related to leases in commercial buildings  
 25 due to vacancies and reduced rents related to CHOP (the Hunters and Madrona entities), I  
 26 controlled for COVID by focusing primarily on the historical financials and rent rolls related to

1 the specific buildings in question, including pre-CHOP pandemic months, rather than a generalized  
2 survey of the City. In my experience, more specific information is the preferred and most reliable  
3 source for calculations. I was also able to speak to the owners and managers of the properties in  
4 question to determine what effects COVID had on their buildings, as opposed to CHOP, and  
5 review relevant documentation Plaintiffs produced in this matter. It is customary to base certain  
6 inputs and assumptions used in valuations on this type of information as well as conversations with  
7 business owners and managers.

8         8. Overall, I made calculations to control for COVID that are reasonable and  
9 appropriate based on the information available and my experience. For example, one such  
10 adjustment involved the computation of economic damages relating to the loss of rent and incurred  
11 expenses for vacant units. When a unit becomes vacant, Hunters Capital budgets a period of  
12 vacancy before the unit will be re-leased. In instances in which properties were vacant, to account  
13 for the effects of COVID, I typically increased the budgeted amount of vacant time for the units  
14 by 50.0 percent based on my discussions with Hunters Capital's management. These longer  
15 vacancy periods due to COVID had the effect of lowering the amounts of damages for lost rent as  
16 compared to any calculation of damages that would not have included such an adjustment.

17         9. For Plaintiffs where I calculated losses related to residential vacancies due to people  
18 breaking or leaving their leases due to CHOP (the Hunters entities, Olive Street Apartments, and  
19 Redside Partners), I reviewed rent rolls and historical financials, including pre-CHOP pandemic  
20 financials, to determine the impact of COVID at the specific buildings in question. It was clear  
21 from that data that there was a spike in vacancies during and after CHOP. Information obtained  
22 through deposition testimony of the owners and managers of the properties determined what the  
23 effects of COVID and CHOP had on their businesses, since they were the ones dealing directly  
24 with the tenants in question. In the case of Olive Street Apartments, the owner knew all of the  
25 tenants personally and knew why they had or had not left their leases. In the cases of Redside and  
26 the Hunters entities, that level of information was not available, but I gathered all relevant available

1 information in addition to conversations with representatives of both entities. For Hunters Capital,  
2 I looked at the variance between the budget and actuals for residential units and found that the  
3 actuals actually outperformed the budgeted amounts prior to the onset of CHOP, even with the  
4 impact of COVID and despite not being able to foresee the impact of COVID. The  
5 underperformance indicated between the actual financial results and budget began at the onset of  
6 CHOP. It is customary to base valuations on this type of information.

7 10. Based on the information for these specific entities, I did in fact make calculations  
8 to control for COVID that are reasonable and appropriate based on that information and my  
9 experience.

10 11. I have also calculated CHOP-related expenses such as graffiti, broken windows,  
11 delivery charges, and payments to private security companies for most of the Plaintiffs (the  
12 Hunters entities, Madrona entities, Olive Street Apartments, Onyx Homeowners Association, Car  
13 Tender, Richmark Label, Bergman's Lock and Key, and Wade Biller). My understanding is that  
14 other than a few specific items raised in the City's Motion for Summary Judgment, the City has  
15 not challenged the calculation of those expenses.

16 I declare under the penalty of perjury under the laws of the United States of America and  
17 the State of Washington that the foregoing is true and correct.

18  
19 DATED this 27<sup>th</sup> day of October, 2022 at Seattle, Washington.

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21   
22 Arik K. Van Zandt

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**CURRICULUM VITAE**

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**ARIK K. VAN ZANDT, ASA, CDBV**

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**PROFESSIONAL EXPERIENCE****Alvarez & Marsal Valuation Services, LLC – Managing Director**

A Managing Director with Alvarez & Marsal Valuation Services, LLC, Mr. Van Zandt conducts valuations of closely held businesses operating in a variety of industries for purposes of litigation support (marriage dissolutions, contract disputes, lost profits claims, general damages and others), acquisitions, sales, recapitalizations, buy-sell agreements, and estate planning and taxation. Mr. Van Zandt also assists clients and counsel in matters involving complex commercial disputes and allegations of fraud, and he performs economic analysis in the areas of forensic accounting, personal injury, wrongful death, and wrongful termination actions. Mr. Van Zandt's primary focus is supporting clients by performing in-depth financial analysis related to complex commercial litigation, valuation disputes, and expert testimony.

**Grant Thornton LLP – Senior Manager**

Mr. Van Zandt was a Senior Manager and local office Practice Leader for Grant Thornton's forensic and valuation services group. He provided business valuations, economic damage analyses, and forensic accounting during two separate stints at Grant Thornton spanning nine years.

**Finacorp Securities – Chief Financial Officer**

Mr. Van Zandt was the CFO of this securities broker/dealer whose lines of business included the sales and trading of debt and equity instruments to institutional clients, operations of a money market portal, and the underwriting of agency, municipal, and corporate debt. Mr. Van Zandt was responsible for all accounting, finance, legal, human resource, and compliance for the firm.

**PROFESSIONAL QUALIFICATIONS AND MEMBERSHIPS**

- Accredited Senior Appraiser (ASA), granted by the American Society of Appraisers
- Certification in Distressed Business Valuation, granted by the Association of Insolvency & Restructuring Advisors

**EDUCATION**

Mr. Van Zandt holds a Bachelor of Arts in Economics from Stanford University. He has completed the American Society of Appraisers Business Valuation Course, Levels I-IV. He has also completed the Association for Insolvency and Restructuring Certification in Distressed Business Valuation courses I-III. Mr. Van Zandt was also a faculty member of the 2014 joint ASA/CICBV Advanced Business Valuation Conference.

## EXHIBIT A

**CURRICULUM VITAE****ARIK K. VAN ZANDT, ASA, CDBV****TESTIMONY EXPERIENCE****DEPOSITION**

<b>Date</b>	<b>Case Name</b>	<b>Type of Business</b>	<b>Jurisdiction</b>
9/16	Dahl v. McNeil	Various Technology Start-ups	King County Superior Court
9/16	Lockett v. King County	Vehicle Licensing Agency	King County Superior Court
10/16	Arceo v. Ross	Individual Economic Loss	Lewis County Superior Court
11/16	JMT Inc. v. Intermatic Inc., et al.	Industrial and Commercial Machinery	United States District Court - California
2/18	Yaron v. Conley	Retail Cannabis	King County Superior Court
6/18	Hacker v. Hacker & Willig, Inc., P.S.	Law Firm	King County Superior Court
7/18	Day v. Day	Data Analytics	Boone County Superior Court
1/19	Renton Heritage LLC v. Associated Materials, Inc.	Residential Real Estate	King County Superior Court
1/19	Wooding v. Woolworth	Real Estate Investment	Judicial Arbitration and Mediation Services
4/19	Frost v. Gauthier	Estate Asset Distribution	King County Superior Court
4/19	Offutt Evanger v. Georgia Pacific Gypsum LLC	Building Materials	Pierce County Superior Court
5/19	Digital Mammography Specialists, Inc., et al. v. Reddy, et al.	Imaging Center	Fulton County Superior Court
7/19	Arena Sports Issaquah, LLC, et al. v. Exxel Pacific, et al.	Recreational Sports Centers	King County Superior Court
8/19	Monfort v. Adomani, Inc., et al.	Electric Vehicle Conversion	United States District Court - California
1/20	Donaldson & Liggins v. RTS Holdings, LLC/Debsay	Freight Trucking	King County Superior Court
1/20	Griffin MacLean, Inc. v. Victory, et al.	Insurance Agency and Brokerage	King County Superior Court
4/20	Delashaw v. Seattle Times, et al.	Surgeon	U.S. District Court Western District of Washington
6/20	McKenzie/Oliver Law et al. v. Ruby Receptionists, Inc.	Call Answering Services	U.S. District Court District of Oregon, Portland Division

## EXHIBIT A

**CURRICULUM VITAE****ARIK K. VAN ZANDT, ASA, CDBV****DEPOSITION, Continued**

<b>Date</b>	<b>Case Name</b>	<b>Type of Business</b>	<b>Jurisdiction</b>
9/20	Deane v. Pacific Financial Group, et al.	Investment Advisory Firm	U.S. District Court Western District of Washington
10/20	Maquiraya v. King County DOT	Transportation	King County Superior Court
10/20	Death v. EC Supply, Inc.	Electronic Equipment	U.S. District Court Western District of Washington
6/21	Hilmoe and OMH Innovations USA, Inc. v. Phillabaum, Ledlin, Matthews & Sheldon, PLLC	Industrial Equipment	Spokane County Superior Court
12/21	Abdu v. EvergreenHealth Medical Center	Acute Care Hospital	Judicial Dispute Resolution
3/22	Estate of Hakki v. Clark	Food/Beverage Retail	Benton County Superior Court
4/22	Golden v. WorldQuant Predictive Technologies, et al.	Artificial Intelligence & Data Science	American Arbitration Association
5/22	Sophia Health, et al. v. Schaffner, et al.	Personal Care Products and Services	U.S. District Court Western District of Washington
8/22	Junda/Big Toe v. LivWell	Medical Marijuana	U.S. District - Colorado, County of Denver
9/22	Hunters Capital LLC, et al. v. City of Seattle	Retail, Real Estate, Restaurant	U.S. District Court Western District of Washington
9/22	Yaron v. Conley	Retail Cannabis	King County Superior Court
10/22	Van Borkulo/Reavis Estate v. City of Seattle/Olson	Student / Graphic Design	King County Superior Court

**TRIAL TESTIMONY**

<b>Date</b>	<b>Case Name</b>	<b>Type of Business</b>	<b>Jurisdiction</b>
5/16	Columbia State Bank v. Astoria Builders Supply	Building Supplies	Circuit Court for the State of Oregon, Clatsop County
10/16	Dahl v. McNeil	Various Technology Start-ups	King County Superior Court
11/16	Arceo v. Ross	Individual Economic Loss	Lewis County Superior Court
1/17	Ketilsson v. Bonzer	Individual Economic Loss	Pierce County Superior Court

## EXHIBIT A

**CURRICULUM VITAE****ARIK K. VAN ZANDT, ASA, CDBV****TRIAL TESTIMONY, Continued**

<b>Date</b>	<b>Case Name</b>	<b>Type of Business</b>	<b>Jurisdiction</b>
1/17	Lyons v. Oberson Tanker Transport	Individual Economic Loss	King County Superior Court
4/17	JMT Inc. v. Intermatic Inc., et al.	Industrial and Commercial Machinery	United States District Court - California
7/18	Hacker v. Hacker & Willig, Inc., P.S.	Law Firm	King County Superior Court
10/18	USA/SEC v. Dawn J. Bennett	Internet Retail – Sports Apparel	United States District Court - Maryland
1/19	Estate of Derschmidt v. Ride the Ducks International, LLC, et al.	Loss to the Estate	King County Superior Court
1/19	Hiraoka v. Ride the Ducks International, LLC, et al.	Individual Economic Loss	King County Superior Court
1/19	Cooley v. Ride the Ducks International, LLC, et al.	Individual Economic Loss	King County Superior Court
1/19	Gerke v. Ride the Ducks International, LLC, et al.	Individual Economic Loss	King County Superior Court
1/19	Wooding v. Woolworth	Real Estate Investment	Judicial Arbitration and Mediation Services
3/19	Yaron v. Conley	Retail Cannabis	King County Superior Court
5/19	Digital Mammography Specialists, Inc., et al. v. Reddy, et al.	Imaging Center	Fulton County Superior Court
7/19	Naness v. Hotson-Naness	Leather Wholesaler	King County Superior Court
8/19	Pemberton v. State Farm Mutual Automobile Insurance Company, et al.	Vehicle Sales	King County Superior Court
10/19	Crane and Mathes v. Majestic Inn, LLC	Mortgage Loan Origination Services	Skagit County Superior Court
1/20	Constantinescu v. Constantinescu	Residential Property Managers	King County Superior Court
3/20	Griffin MacLean, Inc. v. Victory, et al.	Insurance Agency and Brokerage	King County Superior Court
11/20	Dubinin v. Yegorova	Beauty Salon	King County Superior Court
5/21	Litchev v. Litchev	Law Firm	King County Superior Court



## EXHIBIT A

**CURRICULUM VITAE****ARIK K. VAN ZANDT, ASA, CDBV****TRIAL TESTIMONY, Continued**

<b>Date</b>	<b>Case Name</b>	<b>Type of Business</b>	<b>Jurisdiction</b>
7/21	Lynch v. City of Seattle	Individual Economic Loss	King County Superior Court
7/21	Offutt Evanger v. Georgia-Pacific Gypsum LLC	Building Materials	Pierce County Superior Court
8/21	Snap! Mobile, Inc. v. Vertical Raise, LLC and Landers	Digital Fundraising Data Processing, Hosting, & Related Services	1st Judicial District for the State of Idaho in and for the County of Kootenai
9/21	Maquiraya, Rachale v. King County Department of Transportation	County Transportation Division	King County Superior Court
11/21	Bajari v. Bajari	Employee RSUs	King County Superior Court
12/21	Language Garden v. Yang & Luo	Montessori School; Educational Day Care Center; Translation and Interpretation Services	King County Superior Court
1/22	Abdu v. EvergreenHealth Medical Center	Acute Care Hospital	Judicial Dispute Resolution
2/22	Cho v. Lee	Individual Economic Loss	King County Superior Court
5/22	Doshi v. Doshi	Employee RSUs	King County Superior Court
5/22	In re: FORE MACHINE, LLC, et al.	Aerospace Manufacturing	United States Bankruptcy Court for the Northern District of Texas
7/22	Wyckoff Farms v. Industrial Control	Produce, Spirits, Wine, Dried and Dehydrated Food Manufacturing; Frozen Foods	United States District Court – Washington
8/22	Knopp v. Kerbel	Educational Support Services; Dermatologist	King County Superior Court
10/22	Yaron v. Conley	Retail Cannabis	King County Superior Court

**CURRICULUM VITAE****ARIK K. VAN ZANDT, ASA, CDBV****SPEECHES/PUBLICATIONS**

<b>Venue</b>	<b>Date</b>	<b>Subject</b>
Microsoft Corp.	5/11	Intellectual Property: Valuation & Litigation
Miller Nash	5/11	Valuation 101
Forsberg & Umlauf	8/11	Best Practices for Utilizing an Economic Expert
BNY Mellon	6/12	International Divorce
AREA	6/12	Financial Information Review for Self-Employed
Strafford Publications	11/12	Divorce and Dividing Stock Options
The Million Dollar Divorce	4/13	Overview of Business Valuation in the Context of High Value Divorces
BNY Mellon	5/13	Asset Tracing in Divorce
AICPA	7/13	Expert Witness Workshop
KL Gates	7/13	Accounting for Lawyers
IAML Intl Conference	5/14	International Divorce
NACVA Annual Conference	7/14	Top Five Commercial Litigation Assignments
AAML	3/15	Technology in the Courtroom
The Million Dollar Divorce	9/15	Personal and Business Tax Returns
Texas Society of CPAs	10/15	Lost Profits and Economic Damages
AICPA	11/16	Asset Tracing in Divorce and Beyond
AICPA	11/16	So You Want to be a Forensic Expert
The Seminar Group	4/17	Forensic Accounting
Washington Collaborative Law	12/17	Business Valuation 101
Valuation Services Group	2/18	Initial Coin Offerings
Strafford Publications	4/18	Divorce Under Tax Reform
Business Valuation Resources	7/18	Cryptocurrency – Price versus Value
AAML	3/19	Forensic Tracing Issues, Valuation Issues, & Tax
The Seminar Group	4/19	Impact of the New Tax Code – A Panel Discussion
NYSSCPA/FAE Conference	5/19	Cryptocurrency: Price vs. Value
WSCPAs	8/19	Current Valuation Trends in Cannabis
Distressed Investing 2019 – 26 <sup>th</sup> Annual Conference, NY	12/19	PG&E's Estimated Wildfire Liability

**EXHIBIT A**

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**CURRICULUM VITAE                      ARIK K. VAN ZANDT, ASA, CDBV**

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**SPEECHES/PUBLICATIONS, Continued**

<b>Venue</b>	<b>Date</b>	<b>Subject</b>
BNY Mellon	8/20	Family Law in the Time of a Pandemic: A Valuation and Family Law Panel Discussion
SEAK Expert Witness Conference	4/22	Writing an Ironclad Expert Report